# Leong Kam Hoong v Pentadbir Tanah Daerah Seberang Perai Tengah Bukit Mertajam and another appeal

COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEALS NO P–01–151 OF 1995 AND P–01–165 OF 1995
SHAIK DAUD, NH CHAN AND SITI NORMA YAAKOB JJCA
23 OCTOBER 2000

***Land Law*** *— Acquisition of land — Compensation — Principles for valuation — Potential industrial value of land — Whether land should be valued as a whole — Application of s 214A of National Land Code 1965 — Presence of chain rentis, whether relevant consideration — Whether quantum awarded by land administrator should be interfered with*

The appellants' complaints that the amount of compensation awarded to them by the land administrator was inadequate were rejected by the High Court. The appellant submitted that: (i) the judge erred when he failed to consider the principle that even though the scheduled lands were estate lands, they must be valued for their industrial potential; and (ii) both the land administrator and the judge erred when they valued the scheduled lands separately and individually and not as a whole. The respondent submitted that the failure to value the industrial potential of the scheduled lands was very much in keeping with the provision of para 3(e) of the First Schedule to the Land Acquisition Act 1960 ('the Act') and as such was in order. It was also submitted that the government valuer had made comparables of sale transactions in the surrounding areas and in addition had: (i) reduced the value of the scheduled lands by 20% because the acquisition of such lands was made contrary to s 214A of the National Land Code 1965 ('the Code'); and (ii) reduced the value of one of the lots by 30% because a portion of the land lies under two chain rentis (which were erected by a third party).

**Held**, allowing the appeal:

(1) Paragraph 3(e) of the First Schedule seeks to discount the anticipated enhanced value of the scheduled lands when determining the market value of the lands. That paragraph does not do away with the principle that for the purpose of compensating the parties whose lands have been acquired, the potential industrial value of the lands acquired can be taken into consideration when determining the quantum of compensation to be awarded. From the site plans, the scheduled lands were strategically located in the centre of the housing and industrial hub of Province Wellesley. As such the industrial potential of the scheduled lands was apparent and real (see pp 190F–G, 191E, F).

(2) Based on authorities, scheduled lands are to be valued as a whole under the Act. As such there had been a clear error of law when the judge accepted the land administrator's awards when the latter valued the scheduled lands individually and separately

(see p 191C–D); *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 followed.

(3) Section 214A of the Code was not applicable on the facts of this case as the transfer was made to one person, namely the State Authority (see p 191I); *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 followed.

(4) It was unjust and unconscionable that the appellants were deprived of the full value of their lands by the presence of the rentis that were erected by a third party (see p 192B).

(5) Quite apart from the comparables of sales of neighbouring lands, the court was fully satisfied that the failure to value the scheduled lands for their industry potential coupled with the failure to value them as one unit were reasons good enough for the court to interfere with the quantum of compensation (see p 192F).

[**Bahasa Malaysia summary**

Aduan perayu-perayu bahawa jumlah pampasan yang diawardkan kepada mereka oleh pentadbir tanah tidak mencukupi telah ditolak oleh Mahkamah Tinggi. Perayu menghujahkan bahawa: (i) hakim telah khilaf apabila beliau gagal untuk mengambil kira prinsip bahawa walaupun tanah-tanah tersebut dijadualkan sebagai tanah-tanah estet, ia patut dinilai mengikut potensi perusahaan; dan (ii) kedua-dua pentadbir tanah dan hakim telah khilaf apabila menilai tanah-tanah berjadual tersebut berasingan dan secara individu dan bukan secara menyeluruh. Responden menghujahkan bahawa kegagalan untuk menilai potensi perusahaan tanah-tanah berjadual tersebut adalah memenuhi peruntukan dalam para 3(e) Jadual Pertama kepada Akta Pengambilan Tanah 1960 ('Akta tersebut') dan oleh itu adalah teratur. Adalah dihujahkan juga bahawa penilai kerajaan telah membuat perbandingan transaksi jualan bagi kawasan-kawasan sekitar dan selain itu telah: (i) mengurangkan nilai tanah-tanah berjadual tersebut sebanyak 20% kerana pengambilan tanah-tanah berkenaan adalah bertentangan dengan s 214A Kanun Tanah Negara 1965 ('Kanun tersebut'); dan (ii) mengurangkan nilai salah satu lot sebanyak 30% kerana sebahagian daripada tanah tersebut terletak di antara dua rantai rentis (yang telah dibina oleh pihak ketiga).

**Diputuskan**, membenarkan rayuan tersebut:

(1) Perenggan 3(e) Jadual Pertama bertujuan untuk mengurangkan nilai tambahan yang dijangkakan ke atas tanah-tanah berjadual tersebut semasa menentukan nilai pasaran tanah-tanah tersebut. Perenggan tersebut tidak menidakkan prinsip bahawa bagi tujuan memberi pampasan kepada pihak-pihak di mana tanah-tanah mereka telah diambil, nilai potensi perusahaan tanah-tanah tersebut yang diambil boleh dipertimbangkan apabila menentukan kuantum pampasan yang akan diawardkan.

Berdasarkan pelan-pelan kawasan, tanah-tanah berjadual tersebut berlokasi strategik di tengah-tengah kawasan perumahan dan perusahaan Port Wellesley. Oleh itu potensi perusahaan tanah-tanah berjadual tersebut adalah nyata dan benar (lihat ms 190F–G, 191E, F).

(2) Berdasarkan autoriti-autoriti, tanah-tanah berjadual dinilai secara keseluruhan di bawah Akta tersebut. Oleh itu, terdapat satu kesilapan undang-undang yang nyata apabila hakim menerima award pentadbir tanah apabila pentadbir tanah menilai tanah-tanah berjadual tersebut secara individu dan berasingan (lihat ms 191C–D); *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 diikut.

(3) Seksyen 214A Kanun tersebut tidak terpakai ke atas fakta-fakta kes ini kerana pemindahan berlaku ke atas satu pihak, iaitu pihak berkuasa negeri (lihat ms 191I); *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 diikut.

(4) Adalah tidak adil dan tidak berpatutan bahawa perayu-perayu tidak dapat menikmati nilai sebenar tanah-tanah mereka akibat kewujudan rentis tersebut yang dibina oleh pihak ketiga (lihat ms 192B).

(5) Berbeza dengan perbandingan jualan tanah-tanah sekitaran, mahkamah amat berpuas hati bahawa kegagalan untuk menilai tanah-tanah berjadual tersebut untuk mengetahui potensi perusahaan bersama dengan kegagalan untuk menilai tanah-tanah tersebut sebagai satu unit merupakan sebab-sebab yang lebih daripada mencukupi untuk mahkamah campur tangan dalam mengira kuantum pampasan (lihat ms 192F).]

**Notes**

For cases on compensation for land acquisition, see 8 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1355–1372.

**Cases referred to**

*Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang* [1968] 1 MLJ 176 (refd)

*Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 9 (refd)

*Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43 (folld)

*Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 (folld)

*Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35 (refd)

**Legislation referred to**

Electricity Act 1949 s 55(3), (4)

Land Acquisition Act 1960 ss 3(1)(a), 8, 38
National Land Code 1965 s 214A

**Appeal from:** Land Referance No 15–18 of 1992, Lot 720, 787 and 794, Mukim 13, Seberang Perai Tengah, Bukit Mertajam (High Court, Pulau Pinang)

*Ghazi Ishak* (*Ghazi & Lim*) for the appellant in Civil Appeal No P–01–151 of 1995.

*Wong Chong Wah* (*Loo Peh Fern* with him) (*Peter Huang & Richard*) for the appellants in Civil Appeal No P–01–165 of 1995.

*Alizatul Khair bte Osman Khairuddin* (State Legal Adviser, Penang) (*Mohd Ruzima bin Ghazali* with her) for the respondent.

**Siti Norma Yaakob JCA.** (delivering judgment of the court): These two appeals were heard together as they arose from the same proceedings under s 38 of the Land Acquisition Act 1960 ('the Act'), where the appellants' complaints that the amount of compensation awarded to them by the Land Administrator, Seberang Perai Tengah, Bukit Mertajam was inadequate, were rejected by the High Court. In appealing against the High Court decision, the appellants filed separate notices of appeal and upon registration, two files were opened and two civil appeal numbers alloted to them.

The acquisition of the scheduled lands was gazetted under s 8 of the Act on 6 June 1991, and the purpose of the acquisition is stated to be for a public purpose namely industrial and development. The scheduled lands are made up of three lots described as Lots 720, 787 and 794, all in Mukim 13, Bukit Mertajam. The total area acquired from the three lots amounted to 712.045 acres, which is made up as follows:

(1) 84.4054 acres came from Lot 720, for which a compensation of RM44,000 per acre or RM1.00 per sq ft was awarded as compensation.

(2) 321.3750 acres came from Lot 787, for which RM28,000 per acre or RM0.65 sen per sq ft was awarded as compensation and

(3) 315.8750 acres came from Lot 794 for which RM30,000 per acre or RM0.68 sen per sq ft was awarded as compensation.

The High Court agreed with the amounts awarded by the land administrator, dismissed the appellants' reference, forfeited the deposits made by them but made no order as to costs.

Before us, the appellants attacked the judge's findings based on the following grounds.

(1) That the judge erred when he failed to consider the principle that even though the scheduled lands are estate lands, they must be valued for their industrial potential.

(2) That both the land administrator and the learned judge erred when they valued the scheduled lands separately and individually and not as a whole.

In response to the first objection, the State Legal Adviser, Penang, who represented the respondent in both appeals, relied on the provisions of para 3(e) of the First Schedule to the Act which deal with matters to be neglected in determining compensation. The particular paragraph contains the following provisions.

> In determining the amount of compensation to be awarded for any scheduled land acquired under this Act the following matters shall not be taken into consideration:
>
> (a) …
>
> (b) …
>
> (c) …
>
> (d) …
>
> (e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired.

It is the respondent's contention that the failure to value the industrial potential of the scheduled lands was very much in keeping with the provisions of para 3(e), and as such was in order.

We could not agree with such a contention as there is no evidence as to the specific use or specific development that the state authority intends for the scheduled lands. All that we have on record is the gazette notification that declares the purpose for which the scheduled lands were acquired to be for a public purpose namely industrial and development, a purpose that is authorized by s 3(1)(a) of the Act . For the determination of compensation, we consider that the general purpose of such acquisition to be quite a different matter as to the specific use or specific development the scheduled lands are put to upon acquisition. The state authority may well have some grandiose plans as to how the scheduled lands are to be developed with a view to enhancing their value and it is this anticipated enhanced value that para 3(e) of the First Schedule seeks to discount when determining the market value of the scheduled lands. That paragraph we say does not do away with the principle that for the purpose of compensating the parties whose lands have been acquired, the potential industrial value of the lands acquired can be taken into consideration when determining the quantum of compensation to be awarded. Potentialities and realities are quite separate and therein lies the difference. As authority we cite *Bukit Rajah Rubber Co Ltd v Collector of Land Revenue, Klang* [1968] 1 MLJ 176 where Raja Azlan Shah J (as he then was) expressed what market value should be in the following manner:

> In my view, the market value must be based on a rational enquiry of the value of the property to the owner which is an objective assessment of all the surrounding circumstances. Ordinarily, the objective assessment would be the price that an owner willing and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale of the land. The property must be valued not only with reference to its condition at the time of acquisition but also its potential development value.

Twenty-one years later in *Ng Tiou Hong v Collector of Land Revenue, Gombak* [1984] 2 MLJ 35, the Federal Court, whilst appreciating that the Act makes no provision relating to the method of valuation, outlined the main principles 'that have to be applied according to the facts and circumstances of a particular case along the lines provided by the First Schedule to the Act and as decided from time to time by the courts'. We say that one of such principles is that potentialities or possibilities must be taken into account. As was said by Gill J (as he then was) in *Chuah Say Hai & Ors v Collector of Land Revenue, Kuala Lumpur* [1967] 2 MLJ 99, it 'is the possibilities of the land and not its realized possibilities that must be taken into account'.

It is not disputed that the scheduled lands are held in three separate titles with two joint owners with Lots 720 and 794 graded as first grade lands whilst Lot 787 is not graded. In *Collector of Land Revenue v Alagappa Chettiar* [1971] 1 MLJ 43, the Privy Council held that scheduled lands are to be valued as a whole under the Act. That decision was adopted by the Federal Court in *Ng Tiou Hong*'s case and it also reaffirmed the method of valuation adopted in *Chuah Say Hai*'s case where the court valued 23 acres as a single unit even though the totality of the land acquired was held in seven separate titles registered in the names of nine co-owners. As such there has been a clear error of law when the learned judge accepted the Land Administrator's awards when the latter valued the scheduled lands individually and separately.

From the site plans, the scheduled lands are strategically located in the centre of the housing and industrial hub of Province Wellesley. It is bounded by five housing estates namely Taman Sukun, Taman Markissa and Taman Sentul in the south east and Taman Sentul and Taman Mangga in the west and Taman Seri Mangga in the north west. There are also two industrial estates, namely, Perda Industrial Estate and Bukit Tengah Industrial Estate in the immediate neighbourhood of the scheduled lands. As such the industrial potential of the scheduled lands is apparent and real. Additionally Lot 720 has a good road frontage as it is on Jalan Bukit Tengah and Simpang Empat, a major trunk road. Lot 794 however has no access road but there is an irrigation canal to Lot 720 and all three lots are linked together as one. It is one estate with two joint owners, they being the applicants themselves.

The government valuer had made comparables of sale transactions in the surrounding areas and in addition had:

(1) reduced the value of the scheduled lands by 20% because the acquisition of such lands was made contrary to s 214A of the National Land Code 1965; and

(2) reduced the value of Lot 787 by 30% because a portion of the land lies under two chain rentis.

Section 214A, inter alia, provides for the requirement of an approval of the estate land board where estate land is transferred or conveyed to two or more persons. That situation does not arise on the facts of the appeals before us as the transfer is made to one person, namely, the state authority.

As such we say that s 214A is not applicable as was held in *Kumpulan Sua Betong Sdn Bhd v Ezan Sdn Bhd & Anor* [1993] 2 MLJ 289 which was decided on somewhat similar facts.

It is also the appellants' contention that they should not be penalised by the presence of the chain rentis over Lot 787, as they were placed there by Tenaga Elektrik Nasional without acquiring that portion of the land under rentis and as such the land should be valued without regard to the overhead rentis.

We agree with the appellants' contention as we consider it to be unjust and unconscionable that they are deprived of the full value of their lands by the presence of the rentis that were erected by a third party. In any event if Tenaga Elektrik Nasional had wanted the land permanently, it could, under s 55(3) and (4) of the Electricity Act 1949, have requested the state authority to acquire that portion of the land and compensation would have to be paid to the landowners under the Act without due regard to the overhead rentis. Likewise the appellants should be accorded the same consideration and treatment and Lot 787 valued without regard to the overhead rentis.

In the course of the arguments before us, we were also drawn to the fact that on 7 April 1995, another land collector's award in respect of a neighbouring lot, Lot 1099 was increased by the High Court from RM1.48 per sq ft to RM5.00 per sq ft. The material date of valuation was 11 May 1989, two years and one month before the date of valuation of the scheduled lands before us. It was also explained that the enhanced value was due to the fact that Lot 1099 was purchased at RM5.90 per sq ft before acquisition.

Quite apart from the comparables of sales of neighbouring lands, we were fully satisfied that the failure to value the scheduled lands for their industrial potential coupled with the failure to value them as one unit are reasons good enough for us to interfere with the quantum of compensation. Considering the location of the scheduled lands, and their high potential value, we had substituted the awards given by the land administrator and the High Court by increasing the value of the three lots acquired as a whole at RM1.50 per sq ft. To that end, we had allowed both appeals with costs here and below and ordered that the deposits be refunded to the appellants.

*Appeal allowed.*

Reported by Jafisah Jaafar